

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

WASHINGTON HEALTH CARE)
ASSOCIATION, a Washington non-profit)
corporation, et al.,)
)
Plaintiffs,)
v.)
)
SUSAN N. DREYFUS, Secretary of the)
Washington Department of Social and Health)
Services, et al.,)
)
Defendants.)
)

No. CV09-5395-RBL

**STIPULATION AND ORDER
STAYING PROCEEDINGS**

IT IS HEREBY STIPULATED AND AGREED BETWEEN THE PARTIES AS
FOLLOWS:

1. On July 2, 2009, Plaintiffs filed a Motion for Temporary Restraining Order ("Motion") [Dkt. No 4]. The Court granted the Motion on July 9, 2009, and entered its Order Granting Plaintiffs' Motion For Temporary Restraining Order on July 13, 2009 (herein called the "TRO") [Dkt. No. 28].
2. By its terms, the TRO enjoined Defendants from implementing a 7.29% reduction in nursing facility Medicaid reimbursement rates for fiscal year 2010 (July 1, 2009, through June 30, 2010) pursuant to Washington's "budget-dial" statute, RCW 74.46.421, as triggered by the \$156.37 budget-dial rate set forth in ESHB 1244, § 206(1).

STIPULATION AND ORDER STAYING
PROCEEDINGS - 1
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3. Also by its terms, the TRO shall remain in force until thirty (30) days following a decision by the federal Centers for Medicare & Medicaid Services (“CMS”) either approving or disapproving a proposed amendment to the Washington Medicaid State Plan (herein called the “SPA”) relating to the establishment of a \$156.37 budget-dial rate. Defendants subsequently proposed a SPA to CMS regarding the \$156.37 budget-dial rate set forth in ESHB 1244, § 206(1).
4. On October 13, 2009, CMS made a formal request for additional information (“RAI”) to Defendants in connection with the SPA. In the RAI, CMS asked Defendants to provide additional information within ninety (90) days of the date of the RAI, *i.e.*, on or before January 11, 2010. The practical effect of the RAI is to delay CMS’s consideration of the SPA and, thus, extend the duration of the TRO.
5. The 2010 Legislative Session is scheduled to commence on January 11, 2010, and is expected to adjourn sixty days later.
6. The parties stipulate and agree that it is in their mutual best interest to work toward a legislative solution to issues regarding Medicaid payment rates for nursing facility services, rather than invest more resources into this litigation.
7. In order to achieve that result, Defendants will seek to obtain from CMS ninety (90) additional days to respond to the RAI. If the request is granted, Defendants will not submit a response to the RAI until after the close of the 2010 Legislative Session. If the request is not granted, the Defendants will confer with the Plaintiffs.
8. Plaintiffs and Defendants will suspend all current discovery including outstanding requests for discovery and deposition notices or other discovery requests until after the close of the 2010 Legislative Session.

1 9. Neither Plaintiffs nor Defendants will file any motions until after the close of the
2 2010 Legislative Session, including but not limited to a motion for preliminary or
3 permanent injunction as it relates to the TRO and/or the validity of the Medicaid
4 rate cuts as set by the "budget-dial" statute, RCW 74.46.421, as triggered by the
5 \$156.37 budget-dial rate set forth in ESHB 1244, § 206(1).

6 10. During the stay, Plaintiffs will cease communication with CMS directly or through
7 third parties.

8 11. Nothing herein shall be construed as inconsistent with the TRO which shall remain
9 in full force and effect by its terms.

10 DATED this 23rd day of November, 2009.

11
12 LANE POWELL PC

ROBERT M. MCKENNA-Attorney General

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Barbara J. Duffy, WSBA No. 18885
15 Robin Dale, WSBA No. 22166
16 Ryan P. McBride, WSBA No. 33280
Theodore A. Sheffield, WSBA No. 35874

Attorneys for Plaintiffs

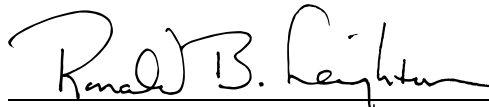
William T. Stephens, WSBA No. 24254
R. Timothy Crandall, WSBA No. 12178
Assistant Attorneys General

Attorneys for Defendants

17
18 **ORDER**

19 Based on the foregoing Stipulation, it is

20 IT IS SO ORDERED this 24th day of November, 2009.

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23 **RONALD B. LEIGHTON**
24 **UNITED STATES DISTRICT JUDGE**

1 Presented by:

2 LANE POWELL PC

3 _____
4 _____
5 Barbara J. Duffy, WSBA No. 18885
6 Robin Dale, WSBA No. 22166
7 Ryan P. McBride, WSBA No. 33280
8 Theodore A. Sheffield, WSBA No. 35874
9 Attorneys for Plaintiffs

7 Approved as to Form; Notice of
Presentation Waived:

8 ROBERT M. MCKENNA
9 Attorney General

10 _____
11 William T. Stephens, WSBA No. 24254
12 R. Timothy Crandell, WSBA No. 12178
13 Assistant Attorneys General
14 Attorneys for Defendants

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STIPULATION AND ORDER STAYING
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